Reserved Judgment

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Writ Petition No. 2071 of 2001 (M/S)

Old No. 24461 of 2000

U.P. State Road Transport Corporation
Through its Regional Manager,
Region Dehradun …… Petitioner

Versus

Rajesh Kumar
and another ……..... Respondents

Mr. Ashish Joshi, learned counsel for the petitioner.
Mr. Pankaj Miglani, learned counsel for respondent No. 1.

Hon'ble P.C. Pant, J.

By means of this writ petition, moved under Article 226 of the Constitution of India, the petitioner has sought quashing of order / award dated 10th September 1999 passed in adjudication case No. 155 of 1999 by the Labour Court, Dehradun.

2) Brief facts of the case, as narrated in the writ petition, are that respondent No. 1, Rajesh Kumar was employed as Conductor with the U.P. State Road Transport Corporation (the petitioner). On 13.03.1995 the Checking Staff of the petitioner-corporation consisting of three Inspectors, on Chandigarh – Shimla route intercepted its bus on which it was found that 25 passengers were travelling without ticket out of the total 27 full passengers and one child passenger. The respondent No. 1 was the Conductor in said bus on said date. The Checking Staff took waybill from the respondent No. 1, in which it was found that entry of only two and a half passengers was made. Not only this, during checking it was found that respondent No. 1 already received money from the 25 passengers as fare which amounted to Rs. 447/-. The respondent No. 1, Rajesh Kumar at

the time of checking endorsed in the waybill before the Checking Staff that he will not commit further mistake in future. The department issued a charge sheet to the respondent No. 1 and placed him under suspension w.e.f. 24.03.1995. However, later on he was reinstated before the enquiry was concluded. In the departmental enquiry, the respondent No. 1 was found guilty of the charges and finally removed from the service vide office order dated 30.11.1997 (copy Annexure- 2 to the writ petition). The respondent No. 2 raised an industrial dispute in respect of his removal from service which was registered as Adjudication case No. 155 of 1999 by the Labour Court, Dehradun. The said Labour Court (respondent No. 2) after exchange of written statement and replies, hearing the parties set aside the order of removal vide its order dated 10.09.1999 published on 08.03.2000 (copy Annexure- 1 to the writ petition). The petitioner-corporation has challenged said order / award on the ground that the award was wholly wrong and illegal and against the evidence on record.

3) A counter affidavit has been filed on behalf of the respondent No. 1 in which it has been admitted that he was employed as Conductor with the petitioner corporation and on 13.03.1995 he was on duty as Conductor in the bus bearing registration number UP 07 D-5850 which was plying on Haridwar – Shimla route. It is also admitted that checking did take place after the bus left Chandigarh. It is also not denied in the counter affidavit that only two full passengers and one child were shown as passengers travelling in the bus in the waybill but the explanation given by the respondent No. 1 in the counter affidavit is that tickets were to be issued to remaining 25 passengers and the entry was to be made in the waybill. According to him unfortunately before this could be done the Checking Squad arrived at the spot and snatched the waybill from the answering respondent. It is denied by the respondent

No. 1, if he was taking 25 passengers without ticket. As to the fact of the departmental enquiry he has admitted that it did take place. However, he has disputed the correctness of procedures and findings of the departmental enquiry. The answering respondent has further stated that the impugned order / award of the Labour Court is lawful and correct.

4) I heard learned counsel for the parties and perused the affidavits along with the annexures annexed thereto by the parties.

5) The short question for consideration before this Court is whether, the impugned order / award dated 10.09.1999 published on 08.03.2000 in Adjudication case No. 155 of 1999 passed by respondent No. 2, Labour Court, Dehradun, is illegal and, is the respondent No. 1 wrongly ordered to be reinstated in service with full back wages by setting aside the order of his removal from service?

6) Admittedly, respondent No. 1 was Conductor with the petitioner-corporation and it has also been admitted that on 13.03.1995 the Corporation's bus was on its way on Chandigarh – Shimla road when the Checking Squad intercepted the bus and the respondent No. 1, as Conductor, found to have been taking 25 other passengers apart from two and a half passengers regarding whom there was entry in the waybill. The dispute relates as to the fact, if the respondent No. 1 had issued tickets to those 25 passengers and had no malafide intention of taking them unauthorizedly. It is also not disputed that a departmental enquiry took place in the matter and the respondent No. 1 was found guilty on which he was removed from service. Consequently he raised the dispute before the Labour Court (respondent No. 2) who decided the case in favour of the respondent No. 1. Before further discussion, it is pertinent to mentioned here what the learned Labour Court has observed in its

impugned order / award. The last paragraph of the impugned order / award (copy Annexure- 1 to the writ petition) shows that the learned Labour Court has held that punishment of removal is harsh and disproportionate to the guilt of the respondent No. 1. The learned Labour Court has further directed that withholding of one annual increment shall be the punishment to the official. With this direction, it has ordered reinstatement of respondent No. 1 with full back wages and Rs. 1,000/- as cost of the litigation. The said paragraph itself shows that the learned Labour Court too did not find respondent No. 1 exonerated. However, in the body of the award the learned Labour Court has concluded that thought the respondent No. 1 was taking 25 passengers on 15.03.1995 without being there entry in the waybill after collecting the money from the passengers, but it has held this act to be a minor mistake which would have been corrected by the respondent No. 1 after few minutes. In the opinion of this Court, the conclusion arrived at by the learned Labour Court are contrary to the evidence on record. Firstly, the respondent No. 2 has totally ignored the endorsement made by respondent No. 1 before the Checking Staff in the waybill that he would not repeat the mistake in future. Secondly, it is hard to believe that from Chandigarh, respondent No. 1 could get only two full and a child passengers; and from Mani-Majara, which is admittedly not a stoppage, 25 passengers boarded the bus as alleged by the respondent No. 1. Assuming for a moment that the 25 passengers boarded just 04 kms. (at Mani-Majara) before the checking took place even then by the time the bus had crossed 04 Kms., atleast one or two or three passengers should have been issued tickets by the respondent No. 1 as Conductor. He has admittedly collected money from all the passengers to the tune of Rs. 447/-. In the circumstances, interpreting the evidence and saying it to be a minor error is nothing but closing eyes to the conduct of the respondent No. 1 who had no case on merits at all. The copy of the enquiry report shows that the

money collected by the Conductor when handed over to the Checking Staff they issued tickets to the passengers. It is nothing but a clear case of corruption on the part of the respondent No. 1 for which the punishment of removal cannot be said to be disproportionate as held by the learned Labour Court. From the enquiry report, it is very clear that the respondent No. 1 has given his reply in the departmental enquiry, and it is well proved that he was given sufficient opportunity of being heard and no principle of natural justice was violated.

7) In view of the above facts and circumstances, this Court has no hesitation in holding that the impugned order and award dated 10.09.1999 published on 08.03.2000 (copy Annexure- 1 to the writ petition) is liable to be quashed as illegal and contrary to law and the evidence on record. Accordingly, the writ petition is allowed. The impugned order / award dated 10.09.1999 passed by the Labour Court, Dehradun in Adjudication case No. 155 of 1999 is quashed. The punishment awarded in the departmental enquiry is upheld. However, meanwhile, in pursuance of the said award if any payment of wages has been made, the same shall not be recovered from the respondent No. 1 but he shall be treated no more in service, henceforth. No order as to cost.

(P.C. Pant, J.)

Dt: October 11, 2004
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